

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

AMY UTTERBACK

Plaintiff,

v

ROBERT ALLEN CLINE AND
INDEPENDENT OPERATORS, LLC

Defendants.

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CIVIL ACTION NO. 2:20-cv-309

JURY REQUESTED

**DEFENDANTS INDEPENDENT OPERATORS, LLC AND ROBERT ALLEN CLINE'S
NOTICE OF REMOVAL**

Pursuant to 28 U.S.C §§ 1332(a), 1441, and 1446, Defendants INDEPENDENT OPERATORS, LLC and ROBERT ALLEN CLINE (hereinafter referred to as “Defendants”) hereby give notice of the removal of this cause of action to the United States District Court for the Southern District of Texas, Corpus Christi Division. Defendants state as grounds for removal the following:

PROCEDURAL STATUS OF THE CASE

1. Plaintiffs AMY UTTERBACK filed this action in the 105th Judicial District Court of Kleberg County, Texas on October 2, 2020. It carries the case style of *Cause No. 20-412-D, Amy Utterback v Robert Allen Cline and Independent Operators, LLC; In the 105th Judicial Court of Kleberg County, Texas.*

2. The Judicial District Court of Kleburg County, Texas issued its citation to Independent Operators, LLC through the Texas Secretary of State. The citation and Petition were reportedly sent by certified mail to Independent Operators, LLC’s last known address. The return

receipt received by Texas Secretary of State's office was dated November 28, 2020.¹ Defendant Independent Operators, LLC specifically challenges service of process and reserves its right to file a Rule 12(b) Motion challenging personal jurisdiction and the sufficiency of service. Defendant reserves its right to file an Answer with affirmative defenses challenging personal jurisdiction and the sufficiency of service. Nothing in this Notice of Removal should be construed as Defendant's waiver of its personal jurisdiction or sufficiency of service defenses.

3. Defendant Independent Operators, LLC is filing this Notice of Removal within 30 days of the date the citation and Petition were received by someone at Independent Operators, LLC's last known address. Defendant Robert Cline consents to removal.

4. All pleadings, process, orders, and other filings in the state court action accompany this notice. *See* 28 U.S.C. § 1446(a).

5. This Notice of Removal is being filed in the record office of the Clerk of the United States District Court for the Southern District of Texas, Corpus Christi Division.

6. Defendants will promptly file a copy of this Notice of Removal with the Kleberg County, Texas, County Clerk.

BACKGROUND

7. This case arises out of a motor vehicle accident alleged to have occurred in Kleberg County, Texas on or about October 5, 2018. Plaintiff Amy Utterback claims she suffered personal injuries as a result of the alleged negligence of Defendants.

8. Plaintiff, Amy Utterback, currently resides in Kleberg County, Texas and is a citizen of the State of Texas.

¹ *See* Ex. D.

9. Defendant, Robert Allen Cline, resides in Todd County, Minnesota and is a citizen of the State of Minnesota.

10. Defendant Independent Operators, LLC was a corporation organized in and with its principal place of business in the State of Minnesota.

BASIS FOR ORIGINAL FEDERAL COURT JURISDICTION

11. Plaintiff Amy Utterback demands judgment in an amount exceeding \$75,000² and the Plaintiff and the Defendants in this matter are citizens of a different State. The district courts therefore have original jurisdiction of this matter according to 28 U.S.C § 1332(a).

PROPRIETY OF REMOVAL

12. This Notice of Removal is timely because it is filed within thirty (30) days of Defendant Independent Operators, LLC's purported receipt of the Original Petition, in accordance with 28 U.S.C. § 1446(b).

13. This court has original jurisdiction of this matter under 28 U.S.C § 1332(a).

14. Except as otherwise expressly provided by an Act of Congress, any civil action brought in a state court of which the district courts of the United States have original jurisdiction may be removed to the District Court of the United States for the district and division embracing the venue where the state court action was pending. *See* 28 U.S.C § 1446(a). The state court action that is the subject of this notice of removal is pending in **Kleberg** County, Texas, which is found in the Southern District of Texas, Corpus Christi Division. Therefore, venue of this removed action is proper in this Court and Division.

15. Removal is not barred by 28 U.S.C. § 1445. Neither Defendant is a citizen of the State of Texas, so removal is not prohibited by 28 U.S.C. § 1441(b).

² See Ex. C, Section II (Plaintiffs' Original Petition).

16. Pursuant to 28 U.S.C § 1446(a) and Local Rule CV-81, Defendants have attached hereto:

- (1) A list of all parties in the case, their party type, and the current status of the removed case;
- (2) A civil cover sheet and certified copy of the state court docket sheet; a copy of all pleadings that assert causes of action; all answers to such pleadings and a copy of all process and orders served upon the party removing the case to this court;
- (3) A complete list of attorneys involved in the action being removed, including each attorney's bar number, address, telephone number, and part or parties represented by him or her;
- (4) A record of which parties have requested trial by jury; and
- (5) The name and address of the Court from which the case is being removed.

REQUEST FOR HEARING AND JURISDICTIONAL DISCOVERY

17. If Plaintiff Amy Utterback, contest this removal, Defendants requests:
- a. A hearing regarding this Court's jurisdiction over, and the propriety of removal of, this matter;
 - b. The opportunity to present evidence demonstrating the existence of federal jurisdiction and the propriety of removal; and
 - c. Leave to conduct limited discovery related to those issues.

JURY DEMAND

18. Defendants demand a jury trial.

WHEREFORE, PREMISES CONSIDERED, Independent Operators, LLC and Robert Allen Cline remove the above captioned action from the 105th District Court of Kleberg County, Texas to the United States District Court for the Southern District of Texas, Corpus Christi Division.

Respectfully submitted,

THE FUENTES FIRM, P.C.

/s/Stefan Casso

JUAN ROBERTO FUENTES

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ATTORNEY FOR DEFENDANTS

INDEPENDENT OPERATORS, LLC AND

ROBERT ALLEN CLINE

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per S. Dist. Tex. Loc. R. LR5.1. A true and correct copy of the foregoing Defendants Notice of Removal was served upon counsel of record in compliance with the Federal Rules of Civil Procedure by certified mail, return receipt requested, telephonic communications, e-mail, hand delivery and/or U.S. Mail on this December 28, 2020.

/s/Stefan Casso

STEFAN CASSO